



**Billing Code 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XR053**

**Endangered and Threatened Species; Take of Anadromous Fish**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** NMFS advises interested parties that the Deschutes Basin Board of Control (DBBC) and the City of Prineville, Oregon (applicants) applied for an incidental take permit, pursuant to the Endangered Species Act (ESA) of 1973, as amended. The DBBC is composed of eight irrigation districts including Arnold, Swalley, Central Oregon, Tumalo, Lone Pine, Three Sisters, Ochoco and North Unit. The permit, if issued, would authorize take of five species under NMFS and U.S. Fish and Wildlife Service (USFWS) jurisdiction. These species are the federally listed Middle Columbia River steelhead (*Oncorhynchus mykiss*), non-listed spring-run Chinook salmon (*Oncorhynchus tshawytscha*) and non-listed sockeye salmon (*Oncorhynchus nerka*), species under NMFS jurisdiction; and the federally listed bull trout (*Salvelinus confluentus*) and federally listed Oregon spotted frog (*Rana pretiosa*), species under USFWS jurisdiction. The permit application addresses incidental take related to irrigation activity including the storage, release, diversion and return of water by the DBBC districts; and groundwater withdrawals and effluent discharge by the City of Prineville. The applicants developed the proposed Deschutes Basin Habitat Conservation

Plan (DBHCP) in support of their application and have requested a permit term of 30 years. The USFWS prepared a draft environmental impact statement (EIS) in compliance with the National Environmental Policy Act (NEPA). NMFS is a cooperating agency under NEPA for this action. NMFS is furnishing this notice in order to allow the public and other agencies an opportunity to review and comment on the proposed DBHCP and the USFWS' EIS.

**DATES:** Comments must be received at the appropriate address (see **ADDRESSES**) no later than 11:59 p.m. Eastern time on **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments received after this date may not be accepted.

*Public Meetings:* During the open comment period, the USFWS will host two public meetings at the following times and locations:

- October 15, 2019, from 6pm to 8pm, Mount Bachelor Village Resort and Event Center, 19717 Mt. Bachelor Drive, Bend, Oregon 97702
- October 16, 2019, from 6pm to 8pm, Carey Foster Hall, Crook County Fairgrounds, 1280 Main Street, Prineville, Oregon 97754 .

**ADDRESSES:** Copies of the proposed DBHCP are available for public inspection online at <https://www.fisheries.noaa.gov/action/proposed-deschutes-basin-habitat-conservation-plan>. The draft EIS (and the proposed DBHCP) can be viewed online at <http://www.regulations.gov>, **Docket No. FWS-R1-ES-2019-0091**. The draft EIS and proposed DBHCP are also available at <https://www.fws.gov/Oregonfwo/articles.cfm?id=149489716>.

You may submit comments by the following methods:

- *Electronic Submission:* <http://www.regulations.gov>. Follow instructions for submitting comments on Docket No. FWS-R1-ES-2019-0091.
- *Public Meetings:* The USFWS will provide computers at the public meetings (see **DATES**) to allow attendees to submit comments.
- *Hard Copy:* Submit by U.S. mail or hand delivery to Public Comments Processing, Attn: Docket No. FWS-R1-ES-2019-0091, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: JAO/1N, Falls Church, VA 22041-3803.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Scott Carlon, NMFS (503) 231-2379 or by email at [scott.carlon@noaa.gov](mailto:scott.carlon@noaa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Statutory Authority**

Section 9 of the ESA prohibits the taking of any listed species. The definition of “take” under the ESA (16 U.S.C. 1532(19)) includes to harass, harm, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the

purpose of, otherwise lawful activity. Section 10(a) of the ESA and implementing regulations specify requirements for the issuance of incidental take permits (ITP) to non-Federal entities for the take of endangered and threatened species. NMFS regulations governing permits for threatened and endangered species are at 50 CFR 222.307. Any proposed take must be incidental to otherwise lawful activities, not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and minimize and mitigate the impacts of such take to the maximum extent practicable. In addition, the applicant must prepare an habitat conservation plan describing the impact that will likely result from such taking, the strategy for minimizing and mitigating the take, the funding available to implement such steps, alternatives to such taking, and the reason such alternatives are not being implemented.

## **Background**

The NMFS and USFWS received an incidental take permit application from the applicants on August 30, 2019. The eight DBBC-member districts are quasi-municipal organizations formed and operated according to Oregon state law to distribute water to irrigators within designated geographic boundaries. Collectively, the districts serve over 7,653 patrons and provide water for approximately 151,000 acres. The City of Prineville operates City-owned infrastructure and provides essential services to over 9,000 residents including municipal water supply, sewage treatment and public safety.

The application included the proposed DBHCP, which describes how impacts to steelhead, spring-run Chinook salmon, sockeye salmon, bull trout and Oregon spotted frog (hereafter covered species) would be minimized and mitigated. The proposed

DBHCP also describes the estimated potential impact on covered species' populations, adaptive management, monitoring, and mitigation measures.

The various activities carried out by the applicants modify the quantity and quality of flow in the Deschutes River and its tributaries through the storage, release, diversion and return of irrigation water and the release of treated municipal sewage. The proposed DBHCP would modify covered activities to reduce the negative effects on the covered species aquatic habitat.

### **Middle Columbia River Steelhead**

The Middle Columbia River (MCR) steelhead covered by the proposed DBHCP are part of a larger distinct population segment (DPS). This DPS was listed under the ESA as threatened on March 25, 1999 and its status was reaffirmed on January 5, 2005 (71 FR 834). This DPS includes all naturally spawned steelhead populations originating below natural and manmade impassable barriers from the Columbia River and its tributaries upstream of the Wind and Hood Rivers (exclusive) to and including the Yakima River; excluding steelhead originating from the Snake River Basin. This DPS also includes steelhead from seven artificial propagation programs.

As a requirement of a new federal license for the Pelton Round Butte Hydroelectric Project on the Deschutes River, Portland General Electric and the Confederated Tribes of the Warm Spring Reservation of Oregon initiated reintroduction of MCR steelhead, non-listed spring-run Chinook salmon and non-listed sockeye salmon upstream of the project. On January 15, 2013, NMFS designated the reintroduced MCR steelhead as a nonessential experimental population. This ruling alleviates ESA section 9 liabilities for lawful activities that may result in incidental take of reintroduced steelhead.

This designation only applies to steelhead occurring upstream of Round Butte Dam, steelhead that occur below this dam retain their status as threatened. The nonessential experimental designation is set to expire on January 15, 2025 and take liabilities will apply for steelhead occurring upstream of Round Butte Dam. The DBHCP is proposed, in part, to mitigate to the maximum extent practicable the applicants' ESA liabilities for otherwise lawful activities that may result in incidental take.

### **National Environmental Policy Act Compliance**

Issuing an ESA section 10(a)(1)(B) permit constitutes a Federal action requiring compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) as implemented by 40 CFR parts 1500-1508. For this action, the USFWS is the lead agency under NEPA. As the lead agency, the USFWS prepared a draft environmental impact statement (DEIS) and is accepting comments on the DEIS at <http://www.regulations.gov>, **Docket No. FWS-R1-ES-2019-0091**. More information regarding the DEIS is available at:

<https://www.fws.gov/Oregonfwo/articles.cfm?id=149489716>. NMFS is a cooperating agency for this action and proposes to adopt the USFWS' NEPA document through its own NEPA process (40 CFR 1506.3).

### **Request for Comments**

If you wish to comment on the proposed DBHCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document. NMFS requests that comments be specific. In particular, we request information regarding: direct, indirect, and cumulative impacts that implementation of the proposed DBHCP or other alternatives could have on MCR steelhead, spring-run Chinook salmon and sockeye

salmon and their habitat; potential adaptive management and monitoring provisions; existing environmental conditions in the plan area; other plans or projects that might be relevant to this proposed project; permit duration; and minimization and mitigation efforts.

### **Next Steps**

NMFS provides this notice pursuant to section 10(c) of the ESA. We will evaluate this permit application, proposed DBHCDP, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the ESA. If NMFS determines that the requirements are met, a permit will be issued for incidental take of covered species. The final permit determinations will not be made until after the end of the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: September 30, 2019.

**Angela Somma,**

*Chief, Endangered Species Conservation Division,*

*Office of Protected Resources, National Marine Fisheries Service.*

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